

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

DECISION AND ORDER

10-CR-0219S

(1)

TONAWANDA COKE CORPORATION and
MARK L. KAMHOLZ,

Defendants.

1. Presently before this Court is Defendant Tonawanda Coke Corporation's motion for this Court's March 17, 2014 Decision and Order on Defendant's ability to pay a significant fine to remain permanently under seal. After reviewing the parties' submissions, this Court holds that Defendant's motion is granted and the decision will remain under seal.

2. "There is little doubt that the First Amendment right of access extends to sentencing proceedings" and that the public and press have a right of access to documents filed in connection with those proceedings. United States v. Alcantara, 396 F.3d 189, 196 (2d Cir. 2005); see United States v. Huntley, 943 F. Supp. 2d 383, 385 (E.D.N.Y. 2013) (highlighting the importance of transparency in the judicial branch). Here, however, sealing the Decision and Order will not unduly hinder the public's ability to consider the rationale behind this Court's decision on Defendant's finances or undermine the importance of transparency in such decisions. As stated at sentencing, the conclusion that Defendant had the ability to pay \$25 million in penalties was "[b]ased on the evidence of [D]efendant's cash flow for the years following 2009 as well as a finding of excess working capital." (Tr. At 8.) Historical financial data supporting this decision was publicly filed in support of

Defendant's initial expert report. (See Docket No. 229-6.) This Court rejected, however, the defense expert's opinion that Defendant would be adversely affected by an *irreversible* downturn in industry conditions where consideration of the submissions as a whole supported the conclusion that any adverse effect was more cyclical in nature.

3. Finally, although the sealed March 17, 2014 Decision and Order provides more detail, it also discusses additional financial documents which were initially submitted to the Probation Department for preparation of this Defendant's Presentence Report. See Alcantara, 396 F.3d at 197 n. 6 (recognizing that courts generally do not recognize a First Amendment right of access to presentence reports). These materials were turned over to the Government only after the entry of a consent order recognizing the confidential nature of the documents. (Docket No. 259.) This Court therefore finds that good cause has been shown for the Decision and Order to remain under seal.

IT HEREBY IS ORDERED, that Defendant's motion for this Court's March 17, 2014 Decision and Order to remain under seal is GRANTED.

SO ORDERED.

Dated: May 29, 2014
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
Chief Judge
United States District Court